



To the Honorable Council
City of Norfolk, Virginia

July 19, 2016

From: George M. Homewood, FAICP, CFM, Planning Director

Subject: **Zoning Text Amendment to section 24-6, "Standards for conditional zoning map amendments" of the Zoning Ordinance to modify language applicable to conditional zoning map amendments for residential development as a result of changes to state law.**

Reviewed: 
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: Citywide

Approved: 
Marcus D. Jones, City Manager

Item Number: **PH-3**

- I. **Staff Recommendation:** Approval.
- II. **Commission Action:** By a vote of **6 to 0**, the Planning Commission recommends **Approval**.
- III. **Request:** The 2016 session of the Virginia General Assembly adopted, and the Governor signed, substantial new limitations on the ability of localities to accept proffers for any rezoning applications. As a result, on July 1, 2016, every locality will thereafter be prohibited from accepting or suggesting any "unreasonable" proffer as part of a rezoning related to a residential development. The request would remove the city's ability to accept proffers and provides the most effective and comprehensive approach to eliminating all unlawful proffers.
- IV. **Applicant:** City Planning Commission
- V. **Description:** The new state law restrictions on proffers contain several provisions which make it exceedingly difficult and expensive to devise a process that keeps out unreasonable proffers. Staff from City Planning and the City Attorney's propose amending the zoning text to not allow the acceptance of any proffers for residential development. As a result, all residential rezonings will be required to be analyzed based on the application complying with *plaNorfolk2030* and not the inducements which may or may not be offered.
- VI. **Historic Resources Impacts**
N/A

VII. Public Schools Impacts
N/A

Staff point of contact: Matthew Simons at 664-4750, matthew.simons@norfolk.gov

Attachments:

- Proponents and Opponents
- Staff Report to CPC dated June 23, 2016 with attachments
- Ordinance

Planning Commission Public Hearing: June 23, 2016

Executive Secretary: George M. Homewood, FAICP, CFM

Planner: Robert J. Tajan, AICP, CFM

JS

Staff Report	Item No. 3	
Applicant	City Planning Commission	
Request	Zoning Text Amendment	Zoning text amendment to section 24-6, "Standards for conditional zoning map amendments" of the <i>Zoning Ordinance</i> to modify language applicable to conditional zoning map amendments for residential development as a result of changes to state law.

A. Summary of Request

The 2016 session of the Virginia General Assembly adopted, and the Governor signed, substantial new limitations on the ability of localities to accept proffers for any rezoning applications. As a result, on July 1, 2016, every locality will thereafter be prohibited from accepting or suggesting any "unreasonable" proffer as part of a rezoning related to a residential development. The request would remove the city's ability to accept proffers and provides the most effective and comprehensive approach to eliminating all unlawful proffers.

B. Plan Consistency

The proposed changes to the *Zoning Ordinance* is neither consistent nor inconsistent with the policies of *plaNorfolk2030*.

C. Zoning Analysis

The new state law restrictions on proffers contain several provisions which make it exceedingly difficult and expensive to devise a process that keeps out unreasonable proffers but permits reasonable ones. These include:

- *Most proffers are off-site proffers.* The new statute has a multi-part test for determining which off-site proffers are lawful, while the process for on-site proffers is less difficult. However, the definition of "off-site proffer" is broad and encompasses nearly all proffers, including nearly all of the ones that have been typical in Norfolk rezonings. In light of the amount of information and study that would be needed to evaluate compliance, most applications which contain an off-site proffer would not satisfy all of the required tests. The following checklist presents a simplified version of the process for determining which proffers are lawful:

- (1) Does the proffer address an impact that is specifically attributable to the proposed activity on the residentially zoned property that is being applied for?
 - (a) If NO, stop. The proffer is unacceptable. (to meet definition of either “onsite proffer” or “offsite proffer at § 15.2-2303.4(A), and fails § 15.2-2303.4(C)(i))
 - (b) If YES, continue.
- (2) Does the proffer address at least one impact outside the boundaries of the residentially zoned property that is the subject of the application?
 - (a) If NO, stop. The proffer is acceptable. (satisfies § 15.2-2303.4(C)(i))
 - (b) If YES, continue.
- (3) Does the proffer address an impact to an offsite road, transit-related improvement, police station, fire station, hospital, school, or recreational facility?
 - (a) If NO, stop. The proffer is unacceptable. (fails § 15.2-2303.4(C)(ii))
 - (b) If YES, continue.
- (4) Does the activity being applied for create a need, or an identifiable portion of a need, for a new or expanded road, transit-related improvement, police station, fire station, hospital, school, or recreational facility in excess of the capacity of the facility that exists at the time of the application?
 - (a) If NO, stop. The proffer is unacceptable. (fails § 15.2-2303.4(C)(ii)(a))
 - (b) If YES, continue.
- (5) Does each of the activities proposed for the residentially zoned property receive a direct and material benefit from the proffer?
 - (a) If NO, stop. The proffer is unacceptable. (fails § 15.2-2303.4(C)(ii)(b))
 - (b) If YES, stop. The proffer is acceptable. (satisfies all applicable requirements of § 15.2-2303.4)

Please note that if logic has to be twisted in order to satisfy the tests above, it is almost certain that the proffer is much more likely to be found unacceptable than not.

- *Unlawful proffers can be challenged at any time.* Once an unreasonable proffer has been accepted, the new statute gives the property owner 30 days to appeal to court to have the illegality corrected. After that time, the owner (or any subsequent owner) can apply for a rezoning to remove the proffer. If the application is denied so that the proffer remains in place, the 30-day clock starts over. This means that any proffer can be alleged at any time to be unlawful and challenged.
- *The appeal process is designed to favor the property owner.* The new statute creates legal presumptions so that courts reviewing a rezoning decision must assume that the illegal proffer was the basis for the decision. Furthermore, the costs and attorneys’ fees for any successful appeal must be paid by the locality. These changes make it more difficult for the locality to defend a zoning decision.
- *The appeal process can remove proffers found to be illegal while keeping the underlying rezoning in place.* The very conditions that allowed the Planning Commission and City Council to approve a proposed residential rezoning may be removed by the court without

returning the application to City Council for further consideration as has been the case up until now. Thus, it is a better and more certain process to consider only straightforward residential zoning applications with no conditions.

- *Costs exceed the benefits.* The costs and uncertainties associated with determining which proffers are unreasonable and, therefore, illegal are considerable. Nearly all of those costs would be borne by the City. Yet the benefits of the proffer process are generally shared by the developer and the immediate neighborhood. Given the considerable increase in costs that are imposed by the new statute, with no commensurate increase in benefits to the public, it now appears that the costs exceed the benefits so significantly that the conditional zoning process for residential development will no longer be viable. The proposed text amendment eliminates this process for residential uses and developments and, thereby, eliminates any prospect of accepting illegal proffers.
- *Applicable date of state law.* The state law amendment, which clarifies what would be considered an unreasonable proffer, will be effective on July 1, 2016.
- *Residential rezoning analysis.* All residential rezonings will now be analyzed solely on the proposed applications compliance with *plaNorfolk 2030*. Any proffers that may be offered by the applicant will not be accepted for all applications submitted after July 1, 2016. Typical residential proffers that will no longer be accepted are the design of the buildings, area and width of lots, and location of primary entrances.

D. Transportation Impacts

N/A

E. Historic Resources Impacts

N/A

F. Public Schools Impacts

N/A

G. Environmental Impacts

N/A

H. AICUZ Impacts

N/A

I. Surrounding Area/Site Impacts

Proffers that deal with design or layout for residential buildings will no longer be permitted.

J. Payment of Taxes

N/A

K. Civic League

N/A

L. Coordination

This application and the draft language have been coordinated with the City Attorney Office.

M. Communication Outreach/Notification

Legal notification was placed in *The Virginian-Pilot* on June 9 and 16.

N. Recommendation

While some have pointed out the perceived negatives regarding having to give up the inducements previously offered as part of residential rezoning requests, staff is of the opinion that, instead, it is a benefit to having the City's comprehensive plan be the primary driver of whether a rezoning should or should not be approved. Perhaps too often of late, the discussion has centered on the quality of quantity of the inducements instead of how the proposal comports with the comprehensive plan. Accordingly, staff recommends that the text amendment request be **approved**.

Attachments:

Proposed text

Proffer Statute Outline

Proponents and Opponents

Proponents

None

Opponents

None

Form and Correctness Approved:

RAV

Contents Approved:

707

By

[Signature]
Office of the City Attorney

NORFOLK, VIRGINIA

By

[Signature]
DEPT.

ORDINANCE No.

AN ORDINANCE TO AMEND SECTION 24-6 OF THE ZONING ORDINANCE OF THE CITY OF NORFOLK, 1992, SO AS TO CONFORM TO NEW RESTRICTIONS IMPOSED BY STATE LAW RELATED TO ANY CONDITIONAL REZONING FOR A RESIDENTIAL USE IN A RESIDENTIAL DISTRICT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Section 24-6 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Standards for conditional zoning map amendments," is hereby amended and reordained so as to revise the process for applications seeking a conditional rezoning to conform to new restrictions imposed by state law related to any conditional rezoning for a residential use in a residential district. The text shall read as set forth in "Exhibit A," attached hereto.

Section 2:- The Council hereby finds that this zoning amendment is required by public necessity, convenience, general welfare, or good zoning practice.

Section 3:- That this ordinance shall be in effect from the date of its adoption.

ATTACHMENT:

Exhibit A (2 pages)

EXHIBIT A

24-6 Standards for conditional zoning map amendments.

24-6.1 *Intent.* It is the intent of this section, in conformance with section 15.2-2296 of the Code of Virginia, to provide a flexible and adaptable zoning method through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the applicant for the protection of the community that are not generally applicable to land similarly zoned. The provisions of this section shall not be used for the purpose of discrimination in housing.

24-6.2 *Conditions as part of an amendment to the zoning map.* The regulations of this section 24-6 permit voluntary proffering in writing, by the owner, of reasonable conditions, prior to public hearings before the planning commission and the city council, in addition to the regulations provided for the Zoning District, as a part of a rezoning or amendment to the zoning map. Such proffers and amendments shall only be permitted as follows:

- (a) *Residential development.* No proffer shall be submitted or accepted for any use or development on any property that is proposed, as part of a rezoning application, to be zoned for either single-family or multifamily housing. If an application for rezoning is submitted with proffered conditions and the property is proposed for either single-family or multifamily housing, then the proffer shall be stricken and the applicant may elect to withdraw the application or else proceed with the rezoning without any conditions. If the applicant fails to make an election after being notified that that application does not comply with this provision, then the application shall be deemed incomplete.
- (b) *All development other than residential development.* On any property that is proposed, as part of a rezoning application, to be zoned for any use other than either single-family or multifamily housing, proffered conditions may be proposed when all of the following criteria are satisfied:
 - (1) The rezoning itself shall give rise for the conditions.
 - (2) Such conditions shall have a reasonable relation to the rezoning.
 - (3) Such conditions shall not include a cash contribution to the city.
 - (4) Such conditions shall not include the mandatory dedication of property for public facilities not otherwise provided for in section 15.2-2241 or 15.2-2242 of the Code of Virginia.

- (5) Such conditions shall not include payment for or construction of off-site improvements except those provided for in section 15.2-2241 or 15.2-2242 of the Code of Virginia.
 - (6) No condition shall be proffered that is not related to the physical development or physical operation of the property.
 - (7) All such conditions shall be in conformity with the comprehensive plan as defined in section 15.2-2223 of the Code of Virginia.
- (c) *Limitations on city staff involvement.* No employee or agent of the city is or shall be authorized to suggest, request, recommend, or require any proffer condition or portion of a proffer condition submitted as part of a rezoning application. This prohibition shall not prevent any such person from providing copies of public documents that contain proffered conditions which may be requested by an applicant.
 - (d) *Proffer sheet shall be in writing.* The initial written statement of the proffered conditions, with any supporting materials, shall be signed by the owner and attached to the petition for amendment at the time of filing for the public hearing before the planning commission. The proffered conditions shall be explained fully by the owner or his agent at the public hearings before the planning commission and the city council.
 - (e) *Limitation on amendment of proffered conditions.* No proffered condition shall be altered or amended after the commencement of the first public hearing at which the application is voted on by the city planning commission for recommendation to the city council.

24-6.3 *Records.* The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The zoning administrator shall keep in his office and make available for public inspection a conditional zoning index. The index shall provide ready access to the ordinance creating the conditions in addition to the regulations provided for in a particular Zoning District or zone.

24-6.4 *Amendment or change of conditions.* There shall be no amendment or change of conditions created pursuant to the provisions of section 24-6.2 until after public hearings before the planning commission and the city council. Such proposed amendment or change of conditions shall be considered and processed as an amendment to this zoning ordinance pursuant to section 24-4.